

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

RSA No.4802 of 2017 (O&M)

Date of decision : 19.09.2018

Mohan Singh

...Appellant

Versus

Bhoga Singh alias Gurdip Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Manjit Singh, Advocate for the appellant.

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**ANIL KSHETARPAL, J. (ORAL)**

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff who is residing abroad through the present suit claims that he is joint owner in possession of the property measuring 16 kanals and 18 marlas as coparcener out of 72 kanals and 14 marlas. He also challenged the Testament executed by his father-Swaran Singh in favour of his son (brother of the plaintiff) who is the only male member residing in India. The plaintiff has claimed the property on the ground that it is a ancestral coparcenary property.

The defendants contested the suit and pleaded that there was neither any joint hindu family nor the property is coparcenary.

Both the Courts after appreciation of the evidence have dismissed the suit filed by the plaintiff. The Courts have noticed that the

plaintiff himself has not appeared in the evidence. Secondly, the plaintiff has failed to prove how the entire property is ancestral.

It has been admitted by the learned counsel for the appellant that some part of the land was purchased by Swaran Singh, father of the parties. However, he submitted that even if that land is ignored, still the property is proved to be ancestral. He submitted that the excerpt has been produced which has not been examined by the Courts. However, the learned First Appellate Court has recorded a finding, which reads as under:-

*“18. Ex.P1 jamabandi for the year 1917-18 shows Pohlo alongwith his brother Nikka to be co-owner to the extent of half and remaining half is shown to have been owned by Khazana son of Angru out of the total land measuring 315 kanals 6 marlas and Pohlo thus recorded to be coowner to the extent of 1/4th which comes out to be 78 kanals 16 marlas. Jamabandi for the year 1975-76 Ex.P2 shows Pohlo to be owner to the extent of ½ alongwith Nikka out of the total land measuring 321 kanals. There is no disclosure of the fact as to from where remaining piece of land came to the share of Pohlo. Even there is no explanation as to how Pohlo became exclusive owner in the jamabandi for the year 1945-46 Ex. P5 in the entire land. Ex. P21 has been the mutation regarding exchange of land between Mohan Singh and Gurdeep Singh Bhogi son of Swaran Singh. Ex. P24 is the jamabandi for the year 1960-61 showing Swaran Singh to be co-owner alongwith Nanju, Najar and Parkash sons of Pohlo out of total land measuring 198 kanals 4 marlas and share of Swaran Singh comes to be 49 kanals 03 marlas. The appellant-plaintiff has claimed the land to be 72 kanals 16 marls without explaining how the remaining piece of land came to be owned by Swaran*

*Singh.”*

Learned counsel for the appellant could not point out any error in the aforesaid finding. Since the plaintiff himself has failed to prove that which part of the property is ancestral and which part of the property is self-acquired, the Courts have correctly dismissed the suit.

In the present case, it is undisputed that 3 out of 4 sons of Swaran Singh are living abroad for quite sometime. It is only defendant No.1 who is living in India and Swaran Singh executed a Will in his favour. The Will has been proved through the statement of DW1-Mohinder Singh, the attesting witness.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**19.09.2018**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                  Yes/No**